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The Work of the Louisiana Appelate Courts for the 1962-1963 Term: A Symposium
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Private Law: Torts

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TORTS

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[Note: Only the cases decided by the Supreme Court during this period have been considered.]

Probably nobody would contend that liability for a cow killed by a train should be predicated upon the violation of a statute which forbade operating trains on Sunday. The explanation which would usually be given for non-recovery in this situation would probably be that the breach of the statute was not the proximate cause of the harm. According to Professor Prosser, in such an explanation "there is an obvious fallacy. In all such cases the act of the defendant itself has caused the damage: if a train run on Sunday strikes a cow, it cannot be said that the act of running the train did not have a causal connection, and a very direct and important one, with the death of the cow."[1] A better explanation would be that the event which occurred was not among the risks against which the statute was designed to protect. Similarly, if a railroad safety regulation imposes a speed limit of 25 miles per hour in the town of Vinton, will liability for a collision accident be predicated upon the breach of that regulation in a situation where it appears that the collision could not have been avoided even had the train been proceeding at a speed within the regulation? That was the question at issue in *Perkins v. Texas & New Orleans R.R.*[2] The Supreme Court held that the defendant was not liable in that situation, stating that as the collision would have been unavoidable even had the train been operating at a speed within the regulation, the violation of the regulation was not the cause-in-fact of the accident. Professor Green has recently stated the view that the proper ambit of the cause-in-fact issue never goes beyond inquiring into whether a causal relation exists between the *totality* of defendant's conduct and the harm in question; he feels that the issue can be settled affirmatively if it can be said that the defendant "had anything to do with" the harm which occurred.[3] Under his view, the approach taken in the *Perkins* case would be subject to criticism as having attempted to deter-

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1. PROSSER, TORTS 155 (2d ed. 1955).

2. 243 La. 829, 147 So. 2d 646 (1962).

3. See Green, *The Causal Relation Issue In Negligence Law*, 60 MICH. L. REV. 543 (1962).

mine whether any causal relation existed between the harm and *that aspect of defendant's conduct which is allegedly negligent or unlawful.* The totality of defendant's conduct — operating a railroad train at a speed of 37 miles per hour — did cause plaintiff's harm, but the negligent aspect of defendant's conduct — the unwarranted additional 12 miles per hour — did not. Viewed in this light, the reason why recovery would be denied in a case like *Perkins* would be that the regulation in question was not designed to protect against the risk of a collision which would have been unavoidable under conditions which would have amounted to compliance with the regulation.

Another instructive causation problem was at issue in *Naquin v. Marquette Cas. Co.*[4] In that case the trial court and the court of appeal concluded that plaintiff had not proved with sufficient certainty that escaping natural gas — which he could without difficulty attribute to the fault of defendant's insured, the town of Breaux Bridge — had caused the fire and explosion which destroyed his apartment. The Supreme Court reversed, concluding that the requirement of proof of causation apparently adopted in the lower courts "raises an insurmountable barrier to the proof of causation in a civil action."[5] After pointing out that proving causation by circumstantial evidence, while requiring the negation of other reasonable hypotheses, does not require negating all other possible causes, the court concluded that the alternative hypothesis put forward by defendant was the "mere suggestion of a remote possibility."[6]

In *Wise v. Prescott,*[7] the Supreme Court was confronted with conflicting tesitmony as to the circumstances under which a release was obtained from plaintiff, a seventy-year-old woman, within twenty-four hours of the accident. According to her testimony, the adjuster did not reveal himself as an employee of the insurer nor did she have any inkling of what she was signing. The adjuster's testimony was contradictory in practically every particular. The court, noting that the legislatures of at least seven states have passed measures affecting the validity of such "rush releases," affirmed a jury finding that plaintiff executed the release through error. The court stated: "Up to this time the Legislature of our state has not enacted

4. 244 La. 569, 153 So. 2d 395 (1963).
5. *Id.* at 574, 153 So. 2d at 396.
6. *Id.* at 578, 153 So. 2d at 398.
7. 244 La. 157, 151 So. 2d 356 (1963).

any law to protect persons suffering personal injuries from the possibility of error inherent to quick releases, compromises, or settlements, and this court would not be justified in declaring a 'rush release' invalid simply because it was obtained within a very short time of the accident. In such cases, however, we feel that we are justified in recognizing that high potential for error in our consideration of all the facts and circumstances connected with the execution of this type of release."[8]

SECURITY DEVICES

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PLEDGE

In *Montaldo Ins. Co. v. Cullotta*,[1] a judgment creditor brought a garnishment proceeding against a bank in which the judgment debtor had some money on deposit. However, to secure a loan, the depositor had executed a written pledge of his accounts to the bank. This was held to be a good pledge for which delivery was not necessary since the pledgee bank already had possession[2] and there was no waiver of its rights by permitting activity of the checking account and withdrawals from the savings account. Thus, even though the plaintiff's garnishment was maintained, his rights were subject and subordinate to the bank's pledge which more than covered the funds in the accounts.

PRIVILEGES

The facts in the case of *Pecora v. James*[3] were pregnant with several problems which remained stillborn. James purchased a trailer under a conditional sale contract executed and duly recorded in Mississippi. With a large balance still unpaid, he brought the trailer to Louisiana and parked it on the plaintiff's premises under a monthly rental agreement. When he disappeared leaving the rent unpaid, the plaintiff had the trailer seized under a writ of sequestration claiming a lessor's privilege.

8. *Id.* at 174, 151 So. 2d at 362.

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1. 153 So. 2d 899 (La. App. 4th Cir. 1963).
2. LA. CIVIL CODE art. 3152 (1870).
3. 150 So. 2d 90 (La. App. 4th Cir. 1963).